

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

MARTIN HERNANDEZ,
Institutional ID No. 2132228

Plaintiff,

v.

LUBBOCK POLICE DEPARTMENT,

Defendant.

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CIVIL ACTION NO. 5:18-CV-00254-C

**ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint on October 15, 2018.¹ He alleges that he was subjected to excessive use of force during his arrest on August 22, 2015. This case was transferred to the docket of the United States Magistrate Judge for screening under 28 U.S.C. §§ 1915 and 1915A. The United States Magistrate Judge entered a Report and Recommendation on February 25, 2019, recommending that the complaint be dismissed with prejudice as barred by the statute of limitations. Plaintiff did not file any objection and the time to do so has passed.

The undersigned Senior United States District Judge has conducted an independent review of the relevant portions of the record in this case and has examined the findings, conclusions, and recommendations of the Magistrate Judge. The Court **ACCEPTS** and **ADOPTS** the findings, conclusions, and recommendation of the United States Magistrate.

¹ See *Cooper v. Brookshire*, 70 F.3d 377, 379 (5th Cir. 1995) (finding that prisoner's *pro se* complaint alleging a § 1983 action would be deemed "filed" as of the date he deposited it in the prison mail system, not as of the date it was received by the district court clerk).

IT IS THEREFORE ORDERED that Plaintiff's complaint and all claims alleged therein are **DISMISSED** with prejudice as barred by the statute of limitations.

Dismissal of this action does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See Williams v. Roberts*, 116 F.3d 1126, 1128 (5th Cir. 1997).

Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Any pending motions are **DENIED**.

Judgment shall be entered accordingly.

SO ORDERED.

Dated March 16, 2019.



SAM R. CUMMINGS
Senior United States District Judge